

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JOSE SANTIAGOCRUZ,

Plaintiff,

v.

9:21-CV-806

**LEON GORDON, PATRICK BECK,
and BRANDON DAIGLE,**

Defendants.

**DAVID N. HURD
United States District Judge**

DECISION & ORDER

Plaintiff, who at the relevant time was a prisoner at the Great Meadow Correctional Facility operated by the New York State Department of Corrections and Community Supervision (“DOCCS”), filed this Complaint pursuant to 42 U.S.C. § 1983. He alleged that Defendants, corrections officers, violated his constitutional rights by failing to protect him from an attack by a fellow inmate.

After discovery, the Defendants filed a motion for summary judgment. See dkt. # 48. The Court referred the matter to the Hon. Miroslav Lovric, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c).

Judge Lovric’s Report-Recommendation, issued on December 15, 2023, recommends that the Court grant Defendants’ motion for summary judgment. Judge

Lovric finds that Defendants have met their burden to demonstrate that Plaintiff failed to exhaust his administrative remedies before filing suit. Even if Plaintiff had exhausted his administrative remedies, Judge Lovric finds that no reasonable juror could conclude that Defendants had any opportunity to act to protect Plaintiff from the attack.

As such, Judge Lovric finds, Defendants could not be liable for violating Plaintiff's constitutional rights by failing to protect him. Judge Lovric also finds that any claims against unnamed John Doe Defendants should be dismissed because Plaintiff has not acted diligently to discover the identities of such Defendants and serve them with the Complaint.

Plaintiff did not object to the Report-Recommendation. The time for such objections has passed. After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice and the Court will accept and adopt the Report-Recommendation for the reasons stated therein.

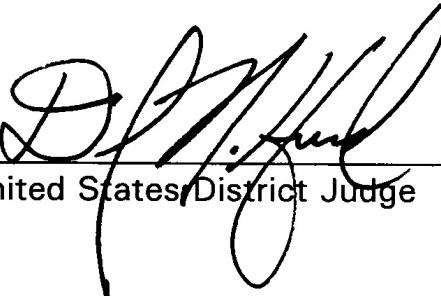
Therefore, it is

ORDERED that

1. The Report-Recommendation (Dkt. No. 62) is **ACCEPTED**;
2. The motion for summary judgment of Defendants Patrick Beck, Brandon Daigle, and Leon Gordon (Dkt. No. 48) is **GRANTED**;
3. Plaintiff's claims against Defendants John Doe #4 and John Doe #5 are *sua sponte* **DISMISSED** without prejudice for failure to identify and serve them;
4. The Clerk of Court is directed to enter a judgment accordingly and close the file.

IT IS SO ORDERED.

Dated: February 8, 2024
Utica, New York.



United States District Judge